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ABSTRACT

This booklet consists of highlights of regulations issued by the United States Department of Labor, the Office of Civil Rights of the Department of Education, the Office of Personnel Management, and various other federal agencies regarding affirmative action in the hiring of the handicapped, especially persons who have recovered from mental or emotional illness. In this short narrative, the booklet introduces affirmative action and explains how it pertains to the employment of mentally restored people. It then covers the provisions of Sections 501, 503, 504 of the Rehabilitation Act of 1973, and Section 402 of the Veterans Readjustment Assistance Act, especially as they apply to mentally restored people. The booklet then explains how employers should implement affirmative action, and contains procedures for persons who feel they have been discriminated against to file a complaint. (KC)

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National Institute of Mental Health
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Affirmative Action to Employ Mentally Restored People

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Foreword I

Affirmative action and nondiscrimination programs for disabled people... Sections 501, 503 and 504 of the Rehabilitation Act... Section 402 of the Vietnam Era Veterans Readjustment Assistance Act.

We've heard a great deal about these in the past 6 years, but we haven't heard the whole story. We generally think of these programs in terms of physically handicapped people. But they also apply to mentally handicapped people—in this booklet to mentally restored people, those with histories of mental illness.

We also usually think of these programs as pertaining only to handicapped people, whether physically or mentally. But they also pertain to a handicapped society, handicapped in its out-of-date perceptions and stereotypes of men and women with physical or mental disabilities.

These affirmative action programs do not automatically bring about change. Neither do regulations or enforcement mechanisms. Employers bring change. Employers with willing hearts.

In short, YOU, the employer-reader of this booklet, YOU make the difference.

Good Luck.

HAROLD RUSSELL
Chairman
The President's Committee on
Employment of the Handicapped

Foreword II

The National Institute of Mental Health is pleased to join with the President's Committee on Employment of the Handicapped in publishing this information on affirmative action as it relates to mentally restored people.

This pamphlet is an important part of the Institute's nationwide effort to stimulate employment of the mentally restored. It accompanies two others, Eight Questions Employers Ask About Hiring the Mentally Restored, *and* The Mentally Restored and Work—A Successful Partnership.

Together, the three provide a persuasive argument that employers in this country should not overlook a labor pool that can quickly be tapped for productive work.

Employing mentally restored people is not only an important response to Federal law, it is also good business. There is a need for solid research in this area further to document our contentions that many of the mentally restored need opportunity, plus some support, to achieve success. Experience has already shown those contentions to be true—anecdotal evidence abounds that in many cases these people are loyal, reliable, and at least equal to most other employees.

Our hope is that this pamphlet and the others can help you prove our belief which is embodied in the statement: Hiring the mentally restored makes dollars and sense.

HERBERT PARDES, M.D.
Director
National Institute of Mental Health

Affirmative Action to employ mentally restored people: what it is

Introduction

Affirmative action programs for the first time in history now bar discrimination against people qualified for jobs even though physically and mentally handicapped.

It is no longer legally permitted to screen out qualified people simply because of disabilities.

But there is another side to affirmative action. For employers, it is a source of good people-power.

There are four programs in all. They are: Section 501, Section 503, Section 504, of the Rehabilitation Act of 1973, Section 402 of the Veterans Readjustment Assistance Act. We'll take them up one at a time. Since Section 501 deals with employment by the Federal government, we will consider it after the others.

Section 503

Every employer doing business with the Federal Government under a contract for more than $2,500 must take "affirmative action" to hire handicapped people. Mentally restored people are included.

"Affirmative action" covers more than just hiring. It also covers job assignments, promotions, training, transfers, working conditions, terminations, and the like.

About half of all the businesses of America—some 3,000,000—are covered by Section 503. Included are virtually all the industrial leaders of our country.

Government contracts include all contracts over $2,500 for supplies or services or for the use of real or personal property, including construction. Subcontracts are included.

"Services" mean such things as utility, construction, transportation, research, insurance, and others.

"Construction" means not only the erection of buildings but their repair, alteration, extension, or demolition. Highway construction is not included.

Enforcement of Section 503 is by the Office of Federal Contract Compliance Programs of the U.S. Department of Labor.

Vietnam Era Veterans Readjustment Assistance Act

This program covers every employer with a Government contract of $10,000 or more. Its purpose is to employ, and to advance in employment, disabled veterans of all wars, as well as all veterans of the Vietnam era. Mentally restored veterans are, of course, included.

Like Section 503, it covers more than hiring. Included are upgrading, demotion, transfer, layoff, termination, pay, selection for training and apprenticeship, and other factors.

This program defines a disabled veteran in two ways:

A person entitled to disability compensation from the Veterans Administration for disabilities rated at 30 percent or more.

A person discharged or released from active duty for a service connected disability.

The Labor Department's Office of Federal Contract Compliance Programs also administers this program.

Section 504

Every institution in the United States getting Federal Financial assistance must take steps under Section 504 to be sure that physically and mentally handicapped people are not discriminated against in employment.

Included are schools, colleges, hospitals, nursing homes, social service agencies, libraries, and many more kinds of institutions and establishments.

Like the previous programs, this one also covers more than hiring. It includes such actions as promotions, job assignments, terminations, transfers, etc.

Section 503 and the Vietnam Era Veterans Readjustment Assistance Act call for "affirmative action." Section 504 calls for "non-discrimination." In practice, there is little difference between the two.

Who administers Section 504?

Every agency of the Federal Government which administers its own grants program is expected to write its own regulations and handle its own enforcement.

For example, the U.S. Department of Transportation would be responsible for handling Section 504 for all institutions and organizations getting grants from that Department. The same is true for the Department of Education, Department of Health and Human Services, Department of Housing and Urban Development, Veterans Administration, and all the rest.

Regulations of all these agencies must be consistent with those issued by the Office of Civil Rights of the Department of Education—the guideline Section 504 regulations.

Section 501

The Federal Government has its own affirmative action program for physically and mentally handicapped persons: Section 501.

Every Federal agency must have its own affirmative action plan. Each is similar to the other affirmative action programs under Sections 503 and 504.

Section 501 is a widespread program covering Federal Government agencies in all parts of the United States.

The Federal Government has two special hiring programs for mentally restored people:

700-hour appointments. Mentally restored people can be hired directly for temporary jobs of up to a total of 700 hours without going through the usual Civil Service procedures. A rehabilitation counselor must certify that they meet the qualification standards for the job.

These appointments, lasting about 4 months, give mentally restored people a chance to establish their job readiness, a chance to test themselves in the world of work, as well as a work experience which can be a stepping stone to a full-time job.

Schedule B appointments. Under this new program, mentally restored people can be hired for up to 2 years on a full-time, part-time, or intermittent basis. A person has to meet three conditions:

- Have a documented history of mental illness which includes periods of hospitalization or outpatient treatment.
- Be certified by a rehabilitation counselor as being capable of functioning in a specific job.
- Be unemployed currently as a result of the mental illness, or have a spotty work record within the past 2 years because of it.

Policies and regulations are put out by the U.S. Office of Personnel Management. Enforcement of affirmative action is in the hands of the U.S. Equal Employment Opportunity Commission.

Who is covered?

All of these programs are designed to protect the job rights and to expand the job opportunities for mentally and physically handicapped people.

Who is handicapped?

Under all the programs, a handicapped person is anyone who:

- Has a physical or mental impairment which substantially limits one or more of his or her major life activities.

- Has a record of such an impairment.
- Is regarded as having such an impairment.

Some explanations:

"Substantially limits. . . ."

This has to do with the degree to which the disability affects employability.

A person having a difficult time getting a job, keeping a job, or getting ahead on a job because of mental or emotional problems is considered "substantially limited."

"Major life activities. . . ."

These include communication, socialization, self-care, education, vocational training, housing, transportation, and, of course, employment.

The main emphasis is on how these major activities affect employment.

Some explanations of the three parts of the definition:

"Has a physical or mental impairment. . . ."

This pertains to people who are qualified for jobs but whose emotional problems may affect the smooth performance of their jobs. They have job skills, but they have some problems that may interfere with day-to-day effectiveness.

"Has a record of such an impairment. . . ."

A person who has been in an institution for treatment for mental illness has a "record of such an impairment," even though he or she no longer has symptoms, or no longer has problems.

A history of mental illness—the past being dredged up to haunt the present—has been a common reason for rejecting qualified mentally restored people for jobs.

"Is regarded as having such an impairment. . . ."

A person who manifests some sort of eccentric or unusual behavior—even though it does not interfere with his or her work—may be "regarded as having such an impairment."

In this respect, it is worth recalling the words of a former medical director of DuPont: "If we had screened out all the people with unusual behavior, there would have been nobody left to invent such things as nylon."

A percentage to keep in mind:

Ten percent of all the people in the United States are estimated to have mental or emotional problems severe enough to need treatment. That's 22,000,000 adults. That's also a lot of skill and talent.

Affirmative action attempts to assure their opportunities for employment and their proper place in the work force.

Qualified

One crucial word runs throughout all affirmative action programs: "qualified."

To be covered by affirmative action, a person must be capable of performing a particular job—with "reasonable accommodation," if it is needed, to the person's handicapping condition.

This brings up another concept in need of explanation. . .

Reasonable accommodation

"Reasonable accommodation" means making necessary adaptations to enable a qualified handicapped person to work.

For mentally restored people, "reasonable accommodation" may include:

Adjusting work schedules. Some mentally restored workers may need to go for treatment or therapy a couple of

times a week. Others may feel uncomfortable in rush-hour crowds. Adjustable work schedules for them would be a "reasonable accommodation."

Restructuring jobs. Some mentally restored people may have problems with some components of their jobs. They may feel ill-at-ease in huge bull pens where many men and women work together. Or excessive noise may bother them. Or excessive quiet. For them, "reasonable accommodation" is a matter of minor modifications. It is not a matter of major alterations to the essentials of the job itself.

Flexible leave practices. Sometimes mentally restored people may need extra time off for care and treatment of their emotional problems. Flexible leave practices would ease the problem and help retain them as productive workers.

"Reasonable accommodation" is just that: reasonable. It does not apply if an employer can show that it would create an undue hardship on the business.

One of the best authorities on "reasonable accommodation" is the mentally restored worker. It is usually helpful to talk things over with him or her.

Identification

To Tell Or Not To Tell

All physically or mentally handicapped job applicants, as well as all employees who want to be covered by affirmative action, will be asked to identify themselves.

But they will be told three things:

The information is to be given voluntarily. If they don't want to tell, they don't have to.

The information will be kept confidential. But there are two exceptions to confidentiality:

Supervisors and managers may be informed of any work restrictions or accommodations needed.

First aid people may be informed about possible emergency treatment.

Refusal to give the information will not subject a person to adverse treatment.

The Notice

Job applications will be given this kind of written notice:

"If you have a handicap and would like to be considered under the affirmative action program, please tell us. This information is voluntary. . . . It will be kept confidential except that (1) supervisors and managers may be informed regarding work restrictions and accommodations, and (2) first aid people will be informed regarding possible emergency treatment."

The notice goes on to ask about any special adaptations that may be needed because of the mental or physical handicap. These could include time off during working hours for therapy or treatment.

Several Points About Telling or Not Telling

To tell or not to tell is a decision every mentally restored person will have to make when applying for work. It isn't an easy one.

Tell. . . and the person is protected by the affirmative action program. He or she cannot be refused consideration for the job simply because of a history of mental illness.

But tell. . . and, even with safeguards, people find out, and there's being looked at, being set apart as, well, different.

Don't tell. . . and the person is not protected by affirmative action. To get coverage, one must declare oneself mentally restored.

Don't tell. . . and there is no opportunity at all for an employer to adapt working conditions to the capacities of the person, no chance at all for "reasonable accommodation" to enhance success on the job.

In sum, a person has to make a hard choice:

Disclose the background of mental illness and gain protection. But, then, some people will "know."

Don't disclose the background of mental illness and forego protection. But there's no way of working out job accommodations if needed.

Mental illness

Mental illness is as variable as the people who have suffered from it. Each person is affected differently. Treatment is individualized. It may be long-term counseling or medication with anti-anxiety or anti-depressive drugs. Many people undergoing treatment are fully able to work and to lead normal lives. A few cannot work. Some can work only part time.

The point is: mental illness affects different people in different ways. Symptoms differ, severity differs, treatment differs, ability to work differs.

It is not fair to mentally restored people — nor is it fair to businesses that are looking for qualified manpower—to attempt to screen out all people with histories of mental illness. It is not fair — nor is it accurate — to attempt to brand all mentally restored people as being alike.

It is not fair — and, furthermore, it is not permitted under affirmative action.

Pre-employment medical exams

In the past, many men and women with histories of mental illness found themselves almost automatically screened out of

jobs by pre-employment medical exams given to all job candidates.

Some employers had blanket restrictions: People with mental illnesses in their backgrounds were disqualified automatically. Obviously, many qualified people were rejected.

Now, affirmative action programs take steps to minimize or eliminate this sort of blanket discrimination.

Under Section 503 and the veterans' program, the employer may require a pre-employment medical exam, if all job applicants have to take it and if it's the last step in the hiring process. But even then, the exam has to be used only to determine suitable placement of a person in a proper job. It cannot be used to screen out people.

Under Section 504, the employer does not have the right to give a pre-employment medical exam or even to ask whether a person has a handicap. But the employer does have the right to ask whether the person can perform tasks related to the job.

> Example: A person with a history of mental illness cannot be asked about his condition. But if driving is a part of the job, he or she may be asked whether he or she has a driver's license.

A medical exam may be given under Section 504 only after a conditional offer of employment has been made. If the medical exam reveals a disqualifying condition, the offer may be withdrawn.

Affirmative Action: what it consists of

So far we have discussed who is covered by affirmative action. Now, just what does an affirmative action program consist of? These are the major components:

General

Affirmative action and nondiscrimination cover all levels of employment including the executive. They also cover all kinds

of employment practices such as hiring, upgrading, transfer, demotion, recruitment, layoff, and termination.

Physical and Mental Qualifications

Employers must look over any physical or mental requirements for jobs to see whether they screen out handicapped people. If by chance they do, the requirements must be clearly job related and consistent with business necessity and safe performance of the job.

Whenever an employer looks into a person's mental or physical condition, queries must be based only on the requirements of the job. And the information may be used only for proper job placement.

Also, the information must be kept confidential except that:

Supervisors and managers may be told about work restrictions and necessary accommodations.

First aid people may be told if the person's condition may possibly require emergency treatment.

Accommodation

An employer must make "reasonable accommodation" to the mental or physical condition of the person—unless the employer can show that accommodations would create an undue hardship on the business.

Pay

Handicapped people may not have their pay reduced because of any outside disability pension or compensation or other payments they may be receiving.

Outreach

Outreach efforts such as these must be made: Not all are required; just those that are appropriate.

All recruiting sources should be used, such as vocational rehabilitation, State employment services, college placement offices, labor unions, mental health facilities, mental health associations, veterans organizations, sheltered workshops, organizations of mentally restored people, and others.

Mental health organizations should be asked for advice on recruitment, placements, training, and reasonable accommodations.

Employment records of current employees known to be mentally restored should be reviewed to see whether their full abilities are being used.

Qualified mentally restored people now outside the labor force should be attracted to jobs mainly through the constituency or advocacy organizations to which they belong.

Internal communications should be used to build acceptance of mentally and physically handicapped people by managers, supervisors, and all other employees.

Spreading the Word

The company's affirmative action or nondiscrimination program should be publicized internally to build support and to gain acceptance. Methods: policy manual, company publications, special meetings, employee orientation, union meetings, or company bulletin boards.

And the program can be publicized externally by noting in help-wanted advertisements that handicapped applicants would be welcome and by working with newspapers and magazines on feature articles about exceptional handicapped employees.

Executive Responsibility

A company executive should be appointed director of affirmative action. He or she should have top management's support. Duties: develop policy statements, set forth affirmative action programs, identify problems, propose solutions, maintain liaison between the company and employment agencies, keep management informed of affirmative action developments, and arrange for career counseling of handicapped employees.

Carrying Out the Program

To make sure that the greatest possible number of people benefit from affirmative action, the employer should:

Look over the employee selection process to be sure handicapped people are considered for other than certain stereotyped kinds of jobs.

For example, mentally restored people should not only be considered for pressure-free jobs. Their widely different tolerances and capacities should be taken into consideration.

Hold briefing sessions for recruiting sources to let them know about company policies, future job openings, and the like. Specifically, let it be known that mentally restored people are welcome.

Carefully select personnel people to assure they will implement affirmative action.

Include handicapped people in the personnel department—including mentally restored men and women who are qualified.

Take part in career days, work-study programs, and trial placement programs of psychosocial rehabilitation centers—all are methods of reaching out into the community.

About complaints

The procedure

What recourse does a mentally restored person have in the event of possible discrimination? With a complaint, the person must submit a signed statement specifying the handicap. If further medical documentation is needed, the person may be asked to provide it or to undergo a medical examination at company expense.

Then the complaint process follows these steps:

(1) *The handicapped person, or someone authorized as a representative, files a written complaint.*

A Section 503 complaint goes to the Office of Federal Contract Compliance Programs, U. S. Department of Labor, Washington, D.C. 20210, or any OFCCP Regional Office.

Section 402 of the Veterans Readjustment Assistance Act complaint: same place.

Section 504: Whichever agency of the Federal Government has granted the Federal financial assistance which the organization has received.

Section 501: U. S. Equal Employment Opportunities Commission, Washington, D.C. 20506.

(2) *If the company or organization has an internal review procedure, the complaint goes there first.*

(3) *If it does not have an internal review procedure, the appropriate agency steps in for a prompt investigation.*

(4) *If the investigation shows no violation, there are circumstances in which the handicapped person may ask for a review of the case.*

(5) *If the investigation does show a violation, efforts are made to encourage the employer to comply and to state in writing that corrective action will be taken.*

(6) *If these efforts don't work, the employer will be given an opportunity for a hearing of the case.*

(7) *If the decision goes against the employer, the Government may impose sanctions or penalties. The Government contract or grant may even be terminated.*

In sum . . .

Affirmative action and nondiscrimination are positive programs. They basically are not punitive. Their purpose is to encourage employers to hire more qualified handicapped men and women, the mentally restored among them. A secondary purpose is to encourage more handicapped people, including those with histories of mental illness, to enter the labor market and qualify for jobs.

These programs can be a way of bringing new talent to the attention of employers who could use fresh sources of manpower.

Punitive provisions have had to be used only seldom. Most employers want qualified people—handicapped or not—and welcome the addition of those with abilities whether or not they happen to have mental or physical disabilities.

A final note

This booklet is not an official regulation. It is not binding. It consists of highlights of regulations issued by the Department of Labor, the Office of Civil Rights of the Department of Education, the Office of Personnel Management, and various other Federal agencies.

For a copy of the official regulations for Section 503 or Section 402 of the Vietnam Era Veterans Readjustment Assistance Act, write to the Employment Standards Administration, U. S. Department of Labor, Washington, D.C. 20210.

For Section 504 regulations, write to the appropriate Federal agency which issued them.

For Section 501, pertaining to Federal Government workers, write to the Office of Personnel Management, Washington, D.C. 20415.

For more information about mentally restored persons, or programs that can assist you, write Partnership, Public Inquiries, National Institute of Mental Health, 5600 Fishers Lane, Rockville, Md. 20857.

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